

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 21-367-03
MICHAEL BARONE	:	

**GOVERNMENT’S OPPOSITION TO
DEFENDANT’S REQUEST FOR RE-SENTENCING**

The United States of America, by its attorneys, Jacqueline C. Romero, United States Attorney for the Eastern District of Pennsylvania, and Matthew T. Newcomer, Assistant United States Attorney, respectfully submits this response in opposition to defendant Michael Barone’s Rule 35 motion seeking to reopen his sentencing. ECF No. 147.

On August 16, 2022, Barone appeared before this Court and pled guilty to one count of conspiracy to commit copyright infringement in violation of 18 U.S.C. § 371 (Count One). He was sentenced before this Court on February 6, 2023, to a below-guideline sentence of 14 months’ imprisonment.

At the close of the lengthy (three hour) sentencing hearing, the Court explained its consideration of the Section 3553(a) factors and then began to put its sentence on the record, at which point defense counsel appropriately interrupted to note that the defendant had not yet been given the opportunity for allocution. The Court then gave the defendant an opportunity to allocute, which he did. The defendant spoke for several minutes and addressed various themes and points that defense counsel had brought out and emphasized throughout the hearing. Defendant then ended his allocution and in no way indicated that he had anything additional he

wanted to tell the Court. The Court then put on the record that it had considered the defendant's allocution as well as the Section 3553(a) factors before imposing a sentence of 14 months' incarceration.

After the sentencing hearing, the defendant contacted the Court and expressed an interest in filing an appeal of his sentence. During a February 13, 2023 conference call with the Court, defense counsel said that her client now claims he had additional things he wanted to share with the Court during his allocution, but that the above sequence of events left him "flustered" and unable to fully articulate his thoughts. Defense counsel suggested that the Court re-open the sentencing for the limited purpose of allowing the defendant to allocute for a second time. The government opposed this request, noting that Rule 35(a) of the Federal Rules of Criminal Procedure only permits a district court to open and correct a sentence, within 14 days of the judgment, where there is "arithmetical, technical, or other clear error." The government noted that there was no error whatsoever on the existing record, given that the defendant had a full opportunity to allocute, that he did so clearly and without complaint, and that the Court expressly considered the allocution as well as the Section 3553(a) factors in reaching its final sentence. The Court agreed that there was no basis for re-opening the sentence.

Defense counsel has now filed a motion with a formal Rule 35 written request to re-open the sentencing to give her client a second allocution. There is no factual or legal basis for this request for the reasons set forth above. Simply put, there is no error to correct.

The government respectfully requests that the Court deny the defendant's motion without further proceedings.

Respectfully submitted,

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United States Attorney

/s/ Matthew T. Newcomer
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Response has been served via ECF and email upon the following:

Kathryn Roberts, Esq.

Counsel for Defendant Michael Barone

/s/ Matthew T. Newcomer

MATTHEW T. NEWCOMER

Assistant United States Attorney

Dated: February 13, 2023